

Fiscal Service, Treasury

§ 240.7

of checks presented for payment, to reconcile checks, and, when appropriate, to make a declination on any check.

(c) Treasury will decline payment on a check when first examination by Treasury establishes that:

(1) The check has a material defect or alteration;

(2) The check bears a forged or unauthorized drawer's signature;

(3) Treasury has already received presentment of, and made payment on, a substitute check, electronic check or original check relating to the check being presented, such that Treasury is being requested to make payment on a check it has already paid;

(4) In the case of an electronic check, Treasury cannot determine whether the check contains a material defect or alteration without examining the original check or a better quality image of the check and Treasury is on notice of a question of law or fact about whether the check is properly payable; or

(5) In the case of a substitute check, Treasury has a warranty or indemnity claim arising under 12 CFR 229.52 or 229.53.

(d) Treasury shall have a reasonable amount of time to complete first examination. However, except as provided in paragraph (e) of this section, if Treasury has not declined payment on a check within 60 days after the check is presented to a Federal Reserve Processing Center for payment, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, in accordance with 31 U.S.C. 3328(a)(2), if, upon presentment for payment, Treasury is on notice of a question of law or fact about whether a check is properly payable, Treasury may defer final payment until the question is settled.

(f) If a Federal Reserve Bank debits a financial institution's reserve account as a result of an erroneous declination, Treasury will promptly refund the amount of the payment.

§ 240.7 Declination protest.

(a) *Who may protest.* Only a presenting bank may protest the declina-

tion of a check that it has presented to a Federal Reserve Bank for payment.

(b) *Basis for protest.* Where Treasury, in accordance with § 240.6, has made a declination of a check presented for payment and a Federal Reserve Bank has reversed its provisional credit to the presenting bank, the presenting bank may file a protest challenging the factual basis for such declination. Protests may be filed challenging the following determinations:

(1) *Counterfeit checks.* The presenting bank may offer evidence that the check is not a counterfeit.

(2) *Altered checks.* The presenting bank may offer evidence that the check is not altered.

(3) *Checks bearing forged or unauthorized drawer's signatures.* The presenting bank may offer evidence that the drawer's signature was authentic or was authorized.

(4) *Checks bearing a forged or unauthorized indorsement.* The presenting bank may offer evidence that an indorsement on the back of the check was not forged or was otherwise authorized in accordance with the requirements of §§ 240.13 through 240.17.

(5) *Prior presentment.* The presenting bank may offer evidence that the check or a paper or electronic representation thereof has not already been presented to, and paid by, Treasury.

(6) *Adequacy of substitute check or electronic check.* The presenting bank may offer an original check or a copy of the check that is sufficient to support a determination that the check does not contain a material defect or alteration.

(c) *Procedures for filing a protest.* A declination protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Branch Manager, Financial Processing Division, Check Reconciliation Branch, Room 700-A, 3700 East-West Highway, Hyattsville, MD 20782, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at <http://www.fms.treas.gov>. Treasury will not consider any protest unless it is received within 90 days from the declination date.

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(d) *Review of a declination protest.* The responsible FMS Director, or an authorized designee, will make every effort to decide any protest properly submitted under this section within 60 days, and will notify the presenting bank of Treasury's decision. In those cases where it is not possible to render a decision within 60 days, the responsible FMS Director, or an authorized designee, will notify the presenting bank of the delay. Neither the responsible FMS Director, nor an authorized designee, will have any involvement in the decision to deny payment of a check under § 240.6 of this part.

(1) If, based on the evidence provided, the responsible FMS Director, or an authorized designee, finds that the presenting bank has met, by a preponderance of the evidence, the criteria in paragraph (b) of this section, Treasury will reverse its decision to decline payment on the check by directing a Federal Reserve Bank to provide credit in the amount of the check to the presenting bank.

(2) If, based on the evidence provided, the responsible FMS Director, or an authorized designee, finds that the presenting bank has failed to meet, by a preponderance of the evidence, the criteria in paragraph (b) of this section, the declination will not be reversed.

[69 FR 61568, Oct. 19, 2004, as amended at 76 FR 57909, Sept. 19, 2011]

§ 240.8 Reclamation of amounts of paid checks.

(a) If, after making final payment in accordance with § 240.6, Treasury determines that any guarantor has breached a presentment guarantee listed in § 240.4, the guarantor shall be liable to Treasury for the full amount of the check payment. Treasury may reclaim the amount of the check payment from any such guarantor prior to:

(1) The end of the 1-year period beginning on the date that a check is processed for payment by a Federal Reserve Processing Center; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (a)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the certifying agency.

(b) Treasury will not reclaim on a check that bears a forged or unauthorized drawer's signature unless it has evidence that the reclamation debtor had knowledge of the forged or unauthorized drawer's signature.

(c) Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic check and not a counterfeit check. Guidance on the key security features found on U.S. Treasury checks is available on the FMS website at: http://www.fms.treas.gov/checkclaims/check_security_new.pdf. Institutions may contact the FMS Questioned Documents Branch at (202) 874-7640 for additional information about these security features or to request training.

(d) Reclamation debts are due to be paid upon receipt of the reclamation by the reclamation debtor. Interest, penalties, and administrative costs associated with unpaid balances will accrue as follows:

(1) *Interest.* Treasury will assess interest on the unpaid principal of the reclamation debt beginning on the 61st day following the reclamation date, and will calculate interest based on the rate published annually by Treasury in accordance with 31 U.S.C. 3717. Interest will continue to accrue until the full amount of the reclamation is paid or Treasury determines that payment is not required.

(2) *Penalties.* Treasury will assess a penalty beginning on the 91st day following the reclamation date. The penalty will be assessed in accordance with 31 U.S.C. 3717 on the unpaid principal of the reclamation debt, and will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(3) *Administrative costs.* Treasury will assess administrative costs associated with the unpaid reclamation debt beginning on the 61st day following the reclamation date. Administrative costs will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.